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Independent Inquiry into Child Sexual Abuse
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18th October 2018

Dear Mr Altman,

There are a number of statements in Mr Archer's presentation to the Mandatory Reporting Seminar where because of lack of time there was no opportunity to go into detail as to the current state of law and regulation in England and Wales. We believe it would be of considerable benefit to the panel if the inquiry were to put the following supplementary questions to Mr. Archer so that he can provide answers on behalf of the DfE concerning statements included in his presentation. In the text below, Mr Archer's statements (taken from the official transcript) are in bold and the relevant questions follow.

Also, it is notable that Mr Archer frequently used the words "should", "could", "would" and similar words which denote discretionary rather than required action. In order to demonstrate how frequently this has happened in Mr. Archer's presentation, which was supposed to be a description of the legal framework of "existing reporting *obligations*" as described in the seminar's agenda, the relevant words have been shown in italic.

"Statutory guidance, Working Together to Safeguard Children and Keeping Children Safe in Education provide the details and both have been revised this year. Paragraph 17 of the first substantive chapter of Working Together is a really clear starting point. It says anyone who has concerns about a child's welfare *should* make a referral to Children's Social Care and *should* do so immediately if there is a concern that the child is suffering significant harm or is likely to do so."

Paragraph 17 of Working Together states the following:

"Anyone who has concerns about a child's welfare *should* make a referral to local authority children's social care and *should* do so immediately if there is a concern that the child is suffering significant harm or is likely to do so. Practitioners who make a referral *should* always follow up their concerns if they are not satisfied with the response."

1. What means does the DfE have to find out whether an individual or an organisation has failed to make a referral when it "should" have in education, healthcare, sport or faith groups?
2. What action does the DfE take in response to such a discovery?

3. Can DfE provide some representative examples of action taken in these circumstances?

“Statutory guidance is guidance which the Secretary of State issues under powers in primary legislation.”

4. The normal meaning of “statutory guidance” is guidance on how to apply or obey a law. As there is no law to report known or suspected child abuse, are you stating that the meaning of statutory guidance is different in this context?
5. If so, why is it different?

“It is guidance which people *should* follow unless they have very good reasons to do otherwise.”

6. What does the DfE do if organisations or individuals decide that they have “very good reasons” not to follow the guidance?
7. Is the definition of “very good reasons” stated anywhere in law or in statutory guidance?
8. If the DfE and the organisation concerned differ about what constitutes a “very good reason”, how is the matter resolved?
9. If an organisation said that a “very good reason” is that they simply don’t want to, what can the DfE do about it?
10. Even if no “very good reason” is stated and the guidance is still not followed, then what can DfE do about it? If the powers of the DfE are different for different organisations, then please provide separate answers in respect of:
 - a. Local authorities
 - b. Local authority run schools
 - c. Academies / Free Schools / Trusts
 - d. Independent schools
 - e. Nurseries
 - f. Sports clubs which have a National Governing Body
 - g. Any other type of organisation within the scope of Working Together.

“It goes well beyond what you might call advice on good practice, and failure to comply *could* lead to action and to sanctions.”

11. In what specific ways does the guidance go beyond advice on good practice?
12. Where in the guidance (or elsewhere) is there any description of sanctions the DfE has the legal authority to apply in the event of a failure by an individual or an organisation to follow the guidance?

“For organisations, governments *can*, for example, intervene or remove the functions in extremis of a local authority failing to deliver its duties towards children or it *can*, for example, deregister an independent school, close it down, potentially disqualifying its owners.”

13. In the case of a local authority, are there any sanctions that the government can invoke before things get so bad that it decides that “in extremis” measures need to be applied?
14. If so,
 - a. What are they?
 - b. What is the legal basis for the DfE’s power to apply them?
 - c. Under what circumstances would DfE consider their use?
 - d. Can the DfE provide examples of cases where they have been applied?
15. In the case of an independent school, are there any sanctions that the government might apply before things get so bad that deregistration and closure has to be considered? (A “Notice to Improve” letter is not of itself a sanction, it is a threat to apply the sanction to deregister a school should it not improve. This question is specific to what other sanctions are available to the DfE in the event of serious or persistent safeguarding shortcomings at an independent school.)
16. If there are additional lesser sanctions,
 - a. What are they?
 - b. What is the legal basis for the DfE’s power to apply them?
 - c. Under what circumstances would DfE consider their use?
 - d. Can the DfE provide examples of cases where they have been applied?
17. How many independent schools have been deregistered by DfE in the past 10 years for reasons of safeguarding problems when they were otherwise financially sound and still in operation?
18. If an independent school has not actually broken the law, but merely failed to follow statutory guidance, what is the legal basis for the DfE to apply the sanction of deregistration and closure?
19. Has the legal basis for the DfE’s power to deregister a school for failing to follow statutory guidance ever been tested in court (for instance by the school / trust seeking judicial review of the decision)?

“For individuals, employers, *might* discipline and, in some cases, dismiss employees whose behaviours have caused the institution to fail to comply with legislation.”

20. In the event that the DfE discovers that an employer has chosen not to discipline or dismiss an employee in circumstances where DfE considers such action to have been appropriate, does DfE have powers to sanction the employer?
21. If so,
 - a. What are they?
 - b. What is the legal basis for the DfE’s powers?
 - c. Under what circumstances would DfE consider their use?
 - d. Can the DfE provide examples of cases where they have been applied?

“In some circumstances, they *would* need to report an employee to the relevant professional body and, in some cases, they or others *might choose* to do so.”

22. In the event that the DfE discovers that an employer has chosen not to report an employee to the relevant professional body in circumstances where DfE considers such action to have been appropriate or needed, does DfE have powers to sanction the employer?
23. If so,
- What are they?
 - What is the legal basis for the DfE's powers?
 - Under what circumstances would DfE consider their use?
 - Can the DfE provide examples of cases where they have been applied?

“The professional body *could* then impose sanctions including disqualification.”

24. In the event that DfE discovers that a professional body has not imposed a sanction where DfE considers such action to have been appropriate, does DfE have powers to intervene?
25. If so,
- What are they?
 - What is the legal basis for the DfE's powers?
 - Under what circumstances would DfE consider their use?
 - Can the DfE provide examples of cases where they have been applied?

“In some cases, criminal offences play a part too; for example, if an individual is deliberately withholding information from the Disclosure and Barring Service or if someone is actively taking steps to shield an offender from prosecution.”

26. Who is responsible for mounting a prosecution when a school deliberately withholds information from the DBS?
27. Did anybody in DfE or elsewhere decide whether a prosecution should be mounted when the ISI reported in 2010 (in a safeguarding inspection specifically commissioned by DfE) that St Benedict's School Ealing had failed to notify the Independent Safeguarding Authority (as it was then known) of the recent resignation of two separate governors for reasons of risk of harm to children?
28. If there was no discussion and/or decision on the subject, why not?
29. If there was a discussion and/or decision on the subject, why was no prosecution mounted?
30. For bodies other than schools which have a statutory duty to inform the DBS (e.g. sports clubs) who is responsible for mounting a prosecution when the organisation deliberately withholds information from the DBS?
31. How is failing to make a DBS referral discovered in a regulated activity that is not subject to independent inspection?
32. How many prosecutions for failing to make a referral to DBS or its predecessors have been undertaken in each year since the duty was enacted into law?
33. How many convictions in each year have occurred as a result?
34. What was the average penalty imposed?

“In 2016/17 the referral rate here was 54.8 per 1,000 children compared to 53.2 in the US and 42 in Australia, both of which, of course, have mandatory reporting duties in much, if not all, of the country.”

35. What evidence can the DfE provide to demonstrate that it is making a like-for-like comparison in these figures, given that referral rate can be affected by such things as
- from where the referrals come
 - the type of referral: sex, physical, neglect,
 - where abuse was perpetrated
 - age and sex
 - substantiation rate
 - service provision?

“So in July 2016 the government consulted on mandatory reporting.”

36. Why was the government’s proposal on mandatory reporting in the public consultation radically different from [Amendment 43 to the Serious Crimes Bill proposed by Baroness Walmsley](#), which resulted in the government agreeing to hold the consultation?
37. Specifically, why was the decision made to include social workers and police within the list of mandated reporters where in Amendment 43 they were not mandated reporters, but instead were the recipients of the reports?

“We have continued with our successive waves of the communications campaign Together We Can Tackle Child Abuse.”

38. Since the DfE (according to a statement earlier in Mr Archer’s presentation) appears to be satisfied with the reporting rate already achieved in comparison with other countries, for what reason was [the campaign](#) conducted?
39. If the reason is that the current rate of reporting is unsatisfactory and needs to be increased, then why was the current reporting rate quoted favourably in comparison with other countries in the DfE presentation?

“We have continued to improve training accreditation and regulation of the social work profession and we will continue to monitor the impact of our broader reforms on reporting; for example, as the new multi-agency arrangements for safeguarding in local areas take shape, as we learn from the work of the Child Safeguarding Practice Review Panel, as well, of course, as from learning from past case reviews more generally.”

40. How is improved “training accreditation and regulation of the social work profession” intended to have any impact on the rate of reports made to children’s services by those employed in Regulated Activities (who are not social workers)?

“The government is committed to identify during the current Parliament whether there are gaps that we need to address and we hope that we will be able to report real progress at the time of the next IICSA seminar in April on that topic specifically.”

41. What does this assessment consist of?
42. When will it be complete?
43. Will its results be published, and if so when?

A further issue of concern is the following statement which Mr Archer made early on in his presentation:

“My starting point is that professionals *should* already be clear what they need to do and when they *should* report concerns.”

This appears to be a most inappropriate starting point and is almost certain to lead to incorrect conclusions. The starting point should not be to assume that professionals “should” be clear about their duties, but to ascertain whether they actually *are* clear about them and whether they fulfil those duties effectively. If the DfE’s starting point is to treat something as being true merely because it thinks it ought to be true, then perhaps it is little wonder that the DfE has not been effective at ensuring that people really are aware of their obligations, nor that the DfE appears to have remained unaware of the situation. In the circumstances, it is hardly surprising that there has been a need for this inquiry.

Ms Pyburn commented to the effect that in her experience many professionals are not clear about their obligations. She stated:

“They are not really sure, exactly, what their obligations are half the time. I think the policy is very nebulous, particularly in this country, there are all different obligations for different groups of professionals, yes, so often they're not entirely sure, but they all say that if they would come to know of abuse, then of course they would report it, and many of them are surprised to hear that there is no legal obligation to do so.”

Mr Renton had a similar point. He stated:

“I deal with a lot of badly organised schools and I think we have to remember that some very famous and wealthy institutions may be very bad at doing the basic job of safeguarding.”

One would expect there to be source for a model safeguarding policy that describes best practice in reporting abuse and fully implements the statutory guidance on reporting abuse and other safeguarding matters. An obvious place to look for such guidance is the website of the NSPCC, the country’s leading child protection charity.

And the NSPCC does in fact have a web page titled “Writing a safeguarding policy”¹ in its learning area. It says that such a policy should include:

- a statement setting out the organisation's commitment to protecting all children
- what the organisation will do to keep children safe and respond to concerns

¹ <https://learning.nspcc.org.uk/safeguarding-child-protection/writing-a-safeguarding-policy>

- a list of the supporting procedures that accompany the policy.

The NSPCC actually includes a model child protection policy along with the description, which it describes as “A template policy you can tailor according to the context of your organisation”. A copy of the document is attached to this letter.²

The document is a mere four pages long. Far from containing “a list of the supporting procedures that accompany the policy” it contains no procedures at all.

- It talks of “using our safeguarding procedures to share concerns” without giving any clue as to what those procedures should contain. For instance, it makes no mention of the need to report suspicions of abuse to the “senior lead for safeguarding”, nor how that might be done, nor whether and how the senior lead for safeguarding should pass on concerns to the authorities.
- It provides no description of types of abuse that people should be on the lookout for nor any description of symptoms which might indicate that abuse is happening.
- It provides no description of safer recruiting practice and which roles may be subject to DBS and other background checks.
- It talks of handling any allegations against staff and volunteers “appropriately” while giving no description of what is or is not appropriate.

The context clearly suggests that this document can be taken and used by an organisation as its safeguarding policy. The last page has placeholders for the organisation to fill in names and contact details for the safeguarding lead, a space to provide a “last reviewed” date and for a dated signature to be applied.

However, in practice, the document is not a policy. It is a vague set of aspirations concerning safeguarding not backed by any procedures or by any obligations on staff or volunteers to act in any specific way.

There can be little doubt that many organisations have taken this document, printed and signed it and put it up on their notice board in the genuine belief that they have done all they need to do for safeguarding. Legally speaking, they quite possibly have.

The NSPCC clearly considers this document to be the state of the art in safeguarding advice. A link to the page was recently tweeted by Caspar News, the @NSPCCpro Twitter account which describes itself as “Child protection news from @NSPCC. Follow us for the latest developments in safeguarding policy, practice and research.”

This might help explain the widespread uncertainty reported by Ms. Pyburn concerning safeguarding obligations applying to those working with children. It is a sad state of affairs when the “statutory guidance” is so vague that even the NSPCC finds itself producing a “safeguarding policy” that in practice provides no useful guidance on effective safeguarding measures.

² <https://learning.nspcc.org.uk/media/1468/example-safeguarding-policy.pdf>

We look forward to your reply on these matters.

Tom Perry
Founder, Mandate Now

Phil Johnson
Chair, MACSAS - Minister and Clergy Sexual Abuse Survivors

Fay Maxted OBE
CEO, The Survivors Trust

Siobhan Pyburn
Founder, Beam Project

Alex Renton
Investigative Writer

Jonathan West
Core Participant, Roman Catholic Investigation

Yours faithfully,

A handwritten signature in black ink, appearing to read 'PP' followed by a stylized flourish.

Mandate Now

Cc: Professor Alexis Jay Chair, IICSA; Riel Karmy-Jones QC, Facilitator MR Seminar; Martin Smith Solicitor to IICSA.